

Exhibit D

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

24 Cr. 542 (ALC)

5 SEAN COMBS,

6 a/k/a "Puff Daddy,"

a/k/a "P. Diddy,"

7 a/k/a "Diddy,"

a/k/a "PD,"

8 a/k/a "Love,"

9 Defendant.

Bond Appeal

10 -----x

11 New York, N.Y.

September 18, 2024

12 3:30 p.m.

13 Before:

14 HON. ANDREW L. CARTER, JR.

15 District Judge

16 APPEARANCES

17 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

18 BY: EMILY JOHNSON

19 CHRISTINE SLAVIK

MADISON SMYSER

20 MITZI STEINER

MEREDITH FOSTER

21 Assistant United States Attorneys

22 AGNIFILO INTRATER LLP

Attorneys for Defendant

23 BY: MARC AGNIFILO

TENY R. GERAGOS

24 Also Present: Francesca Tessier, Pretrial Services Officer

25 Joshua Rothman, Pretrial Services Officer

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1 THE DEPUTY CLERK: Criminal cause for a bail appeal
2 hearing in case No. 24 Cr. 542, United States v. Sean Combs.

3 Counsel, please state your appearances for the
4 government.

5 MS. JOHNSON: Good afternoon, your Honor. Emily
6 Johnson, Madison Smyser, Christy Slavik, Mitzi Steiner, and
7 Meredith Foster, for the government. Behind us, from Pretrial
8 Services, are Officers Francesca Tessier and Joshua Rothman.

9 THE COURT: And for the defendant.

10 MR. AGNIFILO: Yes. Good afternoon, your Honor. Marc
11 Agnifilo with Teny Geragos and Mr. Sean "Love" Combs is with us
12 today as well.

13 THE COURT: OK. All right. Good afternoon.

14 I've seen the submissions. I reviewed the previous
15 submissions that the parties made to Magistrate Judge
16 Tarnofsky. I've looked at the transcript from the bail hearing
17 yesterday. Let me just share with you my initial thoughts to
18 help counsel perhaps cabin your comments appropriately.

19 The government primarily seeks detention based on a
20 risk of flight and the danger of obstruction of justice or
21 witness tampering. Regarding those two bases, first, my lesser
22 concern here is risk of flight, although that is a concern.
23 Certainly, Mr. Combs is a risk of flight. Defense counsel has
24 submitted evidence regarding the efforts that he and his client
25 have made to try to show the Court and the government that he

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1 is not a risk of flight. The government has again attempted to
2 prove that he is a risk of flight, and the government has to do
3 more than just simply prove he's a risk of flight. They must
4 prove that he is a risk of flight such that no condition or
5 combination of conditions will reasonably assure his return to
6 court.

7 The package that's been submitted by Mr. Combs, I
8 think, does not give the Court a reasonable assurance that he
9 would return to court. Regarding the issue of whether or not
10 the government has proven risk such that no condition or
11 combination of conditions would reasonably assure his return to
12 court remains a bit of an open question in my mind, but
13 certainly, the package that's been submitted is not sufficient
14 to reasonably assure his return to court given his wealth.

15 My bigger concern deals with the danger of obstruction
16 of justice and the danger of witness tampering. That is a real
17 concern that I have here. And I've seen the parties'
18 submissions, but I just wanted to give counsel my thoughts as
19 to what I am primarily concerned about.

20 Having said that, I'll now hear from the parties,
21 starting with the government, since the government has the
22 ultimate burden here.

23 MS. JOHNSON: Thank you, your Honor. Would it be
24 acceptable if I spoke from the lectern?

25 THE COURT: You can speak from the lectern. You can

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1 stand there. You can sit there. Wherever you're comfortable
2 is fine with me.

3 MS. JOHNSON: Thank you, Judge.

4 Your Honor, this case is about Sean Combs' physical
5 and sexual violence against women and others. This physical
6 and sexual violence has gone on for decades. It's also about
7 the vast efforts he undertook, using his extensive resources,
8 to cover up his crimes. In other words, the very conduct he's
9 charged with shows his dangerousness, his resources, and his
10 willingness to lie and obstruct.

11 Yesterday, Judge Tarnofsky recognized this when she
12 found that there were no conditions or combination of
13 conditions that could assure the safety of the community or the
14 defendant's appearance in court, and she detained the
15 defendant. The government respectfully submits that your Honor
16 should reach the same conclusion today.

17 As the Court just said, you have, obviously, read our
18 papers in detail and the transcript from yesterday. I want to
19 be clear that we are seeking detention on, in addition to risk
20 of flight and risk of obstruction of justice, but also just on
21 dangerousness generally. All of those factors to be considered
22 in ordering detention weigh in our favor here.

23 As I know the Court knows, in this case detention is
24 presumed under the Bail Reform Act because the defendant is
25 charged with sex trafficking, which is an offense under Chapter

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1 77 of Title 18. It's the defendant's burden to rebut that
2 presumption, and the magistrate court already found that he did
3 not do so.

4 So I want to start with dangerousness and obstruction,
5 and I'd like to talk about the seriousness of the offenses
6 first, which reflects both the defendant's dangerousness and
7 the risks of obstruction if released. Many of the facts are
8 set forth in our submission and were on the record yesterday,
9 so I only want to briefly review a few with your Honor before I
10 dive in.

11 The defendant used force, threats of force, and
12 coercion to cause female victims to engage in sexual activity
13 with male commercial sex workers that he referred to as "freak
14 offs." These were elaborate sexual performances that he
15 arranged, directed, masturbated during, and often
16 electronically recorded. These began in and around 2009, at
17 least, and lasted until at least this year and often took place
18 over multiple days and frequently with more than one escort.
19 These freak offs were arranged with the assistance of members
20 of his enterprise who set up the rooms, stocked the rooms with
21 supplies, arranged the travel, delivered the cash to pay the
22 escorts, among other tasks.

23 The defendant used narcotics so that female victims
24 could continue to participate in freak offs despite exhaustion
25 and fatigue that they began to experience as these were

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1 sometimes multiday events. These narcotics included ketamine,
2 ecstasy, GHB, and others. And victims themselves, in
3 communications that the government has seized, described
4 themselves as being "drugged" during these freak offs.

5 I mentioned that the defendant electronically recorded
6 the freak offs, and he did that at least in part so he could
7 keep the recordings and use them as blackmail against his
8 victims, so I want to pause on that for a moment. In addition
9 to witnesses who would testify to this fact, it's also in black
10 and white in communications that the government has seized.
11 For example, in December of 2015, a victim texted the defendant
12 and makes explicit reference to this type of extortion. This
13 is the quote:

14 "You know what sick and disgusting shit I was reminded
15 of the other day? You forcing me to" — do something else,
16 which I'm not going to mention on the public record — "or you
17 were going to leak some FO shit." FO standing for freak off.

18 The defendant recorded these women engaged in freak
19 offs. He threatened them with those very videos to get them to
20 engage in even more. And the defendant makes a lot of claims
21 yesterday and in his papers about the victims' motives in
22 speaking up now, but that message is from nine years ago. And
23 I suspect that we'll hear that we should ignore these types of
24 things because they're old, but this isn't the only time
25 there's communications that explicitly reference this kind of

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1 blackmail. In fact, the same thing happened much more recently
2 several years later, after 2015, when a different victim said,
3 and here's a quote: "He just threatened me about my sex tapes
4 that he has of me on two phones. He said he would expose me,
5 mind you these sex tapes where I am heavily drugged and doing
6 things he asked of me for the past three years."

7 That's just two examples of the defendant's egregious
8 conduct in extorting and blackmailing victims that happened
9 years apart, and so it's rich when the defense submission filed
10 today accuses the victim of extorting the defendant. Let me be
11 clear. The only person who is engaged in extortion in this
12 case repeatedly is the defendant.

13 At least a dozen witnesses will confirm that they
14 personally observed the defendant's violence towards women or
15 the injuries that were sustained as a result. And in addition
16 to that physical violence towards women, there's also evidence
17 of other violent acts, including physical assaults on other
18 individuals, including employees and witnesses to violence,
19 kidnapping, and arson.

20 The defendant surrounded himself with and used
21 firearms, including three defaced AR-15s and a high-capacity
22 magazine loaded with 59 rounds of ammunition that was seized
23 from his LA and Miami residences this year. Yesterday, defense
24 counsel argued that these were the same guns used by the
25 defendant's professional security team, but what we hadn't told

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1 the Court yet was that we did seize the guns used by his
2 professional security team. We took six of them. They were
3 licensed guns that were registered to the security team. They
4 were stored in the defendant's homes, and he had access to
5 them. But, for obvious reasons, we're much more concerned
6 about the defaced firearms hidden in his personal closet, and
7 that was our focus. But it's worth noting that the defaced
8 guns have nothing to do with security and have everything to do
9 with dangerousness. And even beyond that, when we consider the
10 additional guns that his security team has, he has even greater
11 access to firearms.

12 One more point on this is that the security team is
13 now the same team that he suggests be allowed to monitor him
14 while he's on bail. His head of security was served yesterday
15 with a search warrant for his devices because of what our
16 investigation has revealed about his own personal involvement
17 in the offense conduct and in offenses under investigation by
18 the government.

19 As the Court knows from the transcript of yesterday's
20 proceeding, I spoke then about an incident that occurred on
21 March 5, 2016, at the InterContinental Hotel in Los Angeles,
22 and yesterday the government attached publicly released
23 surveillance footage to our submission as an exhibit. And as I
24 said yesterday, this is a critical incident to assessing both
25 danger and obstruction. I'm going to talk about it a little

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1 bit more today with some additional detail.

2 Contrary to defense counsel's argument yesterday,
3 which attempted to inaccurately recast this incident as just a
4 fight in a relationship, the events of March 5, 2016, are
5 powerful evidence of trafficking, a recorded example of
6 defendant's use of force in connection with a freak off. So
7 I'm going to summarize the evidence again with some additional
8 details that I did not mention yesterday.

9 In short, the evidence shows that the defendant had a
10 freak off at the InterContinental Hotel in Los Angeles on
11 March 5, 2016. The defendant contends that this incident only
12 involves the defendant and the victim, but this is wrong. We
13 have multiple sources of evidence that demonstrate there was at
14 least one commercial sex worker who was with the defendant and
15 the victim in the hotel room prior to the assault that's
16 recorded on camera and remained in the room while the assault
17 was being captured.

18 Following the freak off, the defendant violently
19 assaulted a victim who was sneaking out of the room to leave
20 the hotel. You can see in the hallway surveillance video that
21 she isn't even wearing shoes as she is leaving. She's leaving
22 as fast as she can because she's trying to get out of there.
23 She's in danger. In the video, the defendant storms out of the
24 room in nothing but a towel. He comes up to her, he punches
25 her, he throws her to the ground, he kicks her, he attempts to

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1 drag her back to the hotel room, and then he throws a vase at
2 her.

3 Text messages in the hours and days that follow
4 confirm the injuries caused by the incident. These are quotes:

5 "I have a black eye and a fat lip. You are sick for
6 thinking it's OK to do what you've done."

7 "I still have crazy bruising."

8 This is clear evidence of the dangerousness of the
9 defendant, and it's evidence that he has to try to minimize it.
10 He casts it as a misdemeanor assault arising out of a lover's
11 quarrel based on the fact that he wanted to get his clothes
12 back, but that's not what happened here. The evidence shows
13 that the victim tried to escape the hotel room where the
14 defendant and an escort were without even putting on her shoes.
15 The defendant then violently beat her and tried to drag her
16 back to the hotel room. It was only when hotel security staff
17 intervened that the victim was able to leave the hotel.

18 So this is just one example of violence being used in
19 connection with a freak off, but this incident is also
20 important because of everything that happened after the
21 assaults, because that's when the cover-ups started.

22 First, the defendant tried to bribe a hotel security
23 officer with a handful of cash in exchange for that officer's
24 silence. The security guard refused to be bought. Then the
25 defendant's staff got involved, contacting hotel security to

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1 get the footage of the incident and keep it from being seen by
2 anyone. And by March 8, three days later, the surveillance
3 video somehow disappeared from the hotel server.

4 The defense has argued that there was no criminal
5 investigation, so there couldn't have possibly been
6 obstruction, and the defendant was just trying to prevent
7 something embarrassing from becoming public. But that's not
8 what the evidence shows. In fact, what the defendant himself
9 was saying immediately after the assault on March 5, here's a
10 few messages he sent right after that timestamp on the
11 surveillance video recording:

12 "Call me. The cops are here."

13 "I got six kids."

14 "Yo, please call. I'm surrounded."

15 "You gonna abandon me all alone?"

16 While we don't have evidence that the police were
17 actually there, the point is that the defendant knew he had
18 done something that could elicit a law enforcement response,
19 and he had to cover it up. And critically, his staff knew that
20 police had responded to the victim's apartment. They have
21 photographs of the responding officer's Los Angeles Police
22 Department business card in their text messages, and those
23 staff members remained in contact with the victim to ensure
24 that she would not talk to the police.

25 So these communications, the video disappearing, none

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1 of this is a coincidence. It's a result of defendant's
2 employees trying to cover up his crimes, all at his direction.
3 And the cover-up continued until last year, after the civil
4 suit was filed in November that, among other allegations,
5 detailed this assault at the InterContinental. The defendant
6 responded, and I quote: "I did not do any of the awful things
7 alleged."

8 There is no other way to read this but as an
9 unequivocal denial of his participation in this incident. It's
10 also yet another way that he continued obstructing and covering
11 up what he did. In this year, after CNN released the
12 surveillance video, the defendant ultimately admitted that he
13 was actually the person on that video, but only after it was
14 leaked to the media and only after there was indisputable proof
15 of his identity on tape and his violence on tape.

16 But yesterday we got more to the story. That
17 apparently this assault was precipitated by the defendant being
18 hit in the head, while he was sleeping, by a cell phone and his
19 clothes being taken in a small overnight bag that you can see
20 the victim walking down the hall with in addition to her purse.
21 This is apparently why he runs out of the hotel in nothing but
22 a towel. But our evidence will show that's just not what
23 happened. Assuming, for the sake of argument, that it did,
24 which it didn't, but assuming that, punching, kicking, and
25 dragging someone in and of itself is a crime, and covering that

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1 up is an act of obstruction. And if it's about the clothes and
2 wanting to get the clothes back, which again it's not, why drag
3 the victim back down the hall to the room? And you can see
4 that on the tape. That's what he does. This explanation is
5 just another cover-up. It's just more lies, and it's just more
6 obstruction.

7 This sequence of events and all the indisputable
8 evidence — from the videos to the text messages to the
9 photographs that are in communications — makes clear that you
10 cannot take the defendant at his word when he denies his
11 criminal conduct. But make no mistake, March 5, 2016, is far
12 from the defendant's lone act of violence and obstruction, so
13 let's talk a little bit more about that.

14 Freak-off activity is the core of this case, and freak
15 offs are inherently dangerous. They use force, coercion, and
16 drugs to coerce the victims into doing the freak offs. The
17 defendant controlled aspects of their lives, used significant
18 physical force against them, and all to compel them to engage
19 in these lengthy sex acts.

20 Yesterday, the defense said they interviewed about
21 half a dozen escorts who would dispute the government's account
22 of what happened during the freak offs. Our investigation is
23 ongoing, and so I can't say too much about this, but I will
24 note that half a dozen escorts is just the tip of the iceberg
25 of the number of escorts who have participated in freak offs.

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1 And yesterday, the defense also spent a lot of time
2 talking about how these freak offs were between consenting
3 adults and how the government was not claiming sex without
4 consent. Abuse occurred in the context of at least one
5 long-term relationship, which we acknowledge, but the
6 government's theory does involve a lack of consent. This case
7 is charged, at least in part, in Count Two as sex trafficking
8 by force, fraud, and coercion. When a woman is being beaten
9 and coerced in order to get her to engage in commercial sex
10 activity, those sex acts are not consensual.

11 And as I said yesterday, it is really important to
12 note that long-term relationships and abusive relationships are
13 not mutually exclusive. The government expects to introduce
14 the testimony of expert witnesses regarding the dynamics that
15 appear in almost all sex trafficking and sex abuse cases.
16 Similar testimony has been introduced in several cases in this
17 district. A few examples are *United States v. Hadden*, *United*
18 *States v. Ray*, *United States v. Maxwell*, and *United*
19 *States v. Rivera*.

20 We expect that these expert witnesses will explain
21 issues of apparent consent and how abusers control their
22 victims, even in the context of long-term relationships in
23 which the victims express love for their abusers and continue
24 to go back to them. We further expect that these expert
25 witnesses will discuss various forms of coercion, including

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1 isolation, intimidation, violence, manipulation, surveillance,
2 narcotics, grooming behaviors, and others, and generally why
3 victims do not leave their abusers and immediately report their
4 crimes.

5 The focus of today's proceeding, however, is not and
6 should not be on the dynamics of abusive relationships.
7 Today's proceeding is squarely focused on the defendant alone
8 and whether the defendant presents a danger to the community,
9 whether the defendant threatens the integrity of these
10 proceedings, and whether the defendant presents a risk of
11 flight, all of which he does.

12 Defense counsel has made much yesterday and today in
13 his letter about his misinformed view that there was not a sex
14 crime here, and therefore, the nature of this offense doesn't
15 weigh in favor of detention. He's argued, in essence, that
16 anyone who was participating in a freak off wanted to be there.
17 That flies in the face of the evidence in this case, much of
18 which we've laid out to the Court, but it also shows a
19 misunderstanding of the law.

20 When participants in commercial sex activity are
21 threatened with the release of collateral videos, like those
22 two text messages I read, when they are threatened with the
23 loss of their livelihood and housing — we'll get to that in a
24 minute — and when they're beaten both during and outside freak
25 offs — you saw video of that — they cannot consent. That is

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1 trafficking. This view was especially evident when counsel
2 spent time minimizing and horrifically understating the
3 defendant's violence. The video from March 5, 2016, is far
4 more than a misdemeanor assault, as he claims. When force or
5 coercion is used in connection with commercial sex, as it is
6 here, again, that's trafficking.

7 The defendant's decades-long history of violent
8 conduct makes clear that even the most stringent bail
9 conditions will not suffice to ensure the safety of the
10 community. The inquiry in this context is focused on the
11 danger to any real person, and the evidence shows that there is
12 a risk of physical danger towards victims, employees, and other
13 individuals.

14 The investigation has revealed evidence of numerous
15 assaults against female victims and other individuals. These
16 assaults involved choking, hitting, kicking, dragging victims
17 sometimes by their hair. They sometimes occurred in cars where
18 victims heads were slammed against the car window or on the
19 floor of a car. And again, independent evidence like text
20 messages confirms this type of violence. Without attributing
21 any of these messages, I'm going to read four that make my
22 point:

23 "I turn my head for a second, and you get fucked up,
24 and you drag me down the hall by my hair."

25 "I have bleeding cuts."

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1 "You hit me in the head two good times."

2 "When you get fucked up the wrong way, you always want
3 to show me that you have the power and you knock me around.
4 I'm not a rag doll. I'm someone's child."

5 And we don't just have the texts. We also have
6 witnesses who can confirm, because they witnessed this violence
7 and they witnessed the injuries. And this conduct took place
8 behind closed doors — in houses, in hotel rooms, in cars, in
9 settings that are not easily monitored by even the most
10 stringent conditions of release. And I note that Judge
11 Tarnofsky was particularly concerned about this point and also
12 about the next one: that the defendant's violence was
13 premeditated and spontaneous. And I think the text messages I
14 just read highlight that. And the defendant's violence, the
15 spontaneity exacerbate the difficulty of crafting conditions of
16 release to ensure the safety of any person. How do you craft
17 bail conditions that can address the defendant's tendency to
18 become violent at the slightest provocation and to become
19 violent, as the text messages say, when he "gets fucked up the
20 wrong way"?

21 In fact, Judge Tarnofsky found that she did not
22 believe defense counsel had the ability to control the
23 defendant, given his substance abuse and anger issues. There
24 is a long-standing pattern of abuse here, a pattern that has
25 been entirely undeterred by threat of public exposure or law

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1 enforcement intervention, and it's probative of whether the
2 defendant will continue to engage in that pattern.

3 I note we cite this case in our paupers, but the
4 *Mercedes* case in the Second Circuit, 254 F.3d 433 (2d Cir.
5 2001), talks about the danger of releasing defendants with a
6 history of domestic violence, noting that a domestic violence
7 history is probative of a dangerousness determination because a
8 willingness to strike a loved one is evidence of a tendency to
9 be violent and dangerous towards others. And in that case, the
10 circuit reversed the district court's order of release for a
11 defendant with a history of domestic violence but no criminal
12 history.

13 So let's turn to obstruction now, and I know that your
14 Honor is particularly interested in this point.

15 So the risk of obstruction in this case is heightened
16 because of the defendant's power. It gives him a unique
17 ability to influence people and to intimidate witnesses and
18 victims. Witnesses have universally, one for one, expressed to
19 us their extreme fear of the defendant, extreme. His influence
20 makes it so difficult to convince witnesses to share their
21 experiences and to trust that the government can keep them safe
22 from him.

23 I talked about some of it before with the March 5
24 incident, but we have evidence that further indicates that the
25 defendant and his coconspirators will deflect, minimize, and

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1 lie about his conduct. Defense counsel spent time trying to
2 recast his, what I submit to the Court are obvious, obstructive
3 efforts as just maintaining contact with people. So before we
4 dive in, I want to be clear about a few principles of
5 obstruction based on the statutes that have been charged in
6 this case.

7 There need not be an existing investigation or
8 official proceeding, and the defendant need not know about it.
9 What we will also show that the defendant knew about this
10 investigation at least as of January 2024, and he certainly
11 suspected the possibility of an investigation after November of
12 2023 when civil lawsuits were filed alleging, among other
13 offenses, sex trafficking.

14 So following that November civil suit, when the
15 defendant certainly had reason to suspect the possibility of an
16 investigation, he and his coconspirators continued their
17 efforts to reach out to potential victims or witnesses. This
18 outreach has included directly contacting at least one victim
19 in November of 2023, constant contact with witnesses to the
20 charged conduct, and with contacting of witnesses, including
21 those who received grand jury subpoenas, prior to dates of
22 testimony or government meetings. And this contact is as
23 recent as July of 2024, so well after the government has
24 definitive proof that the defendant knew about this
25 investigation.

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1 So two of those examples are there were communications
2 between the defendant and a witness who received a grand jury
3 subpoena. These communications are both prior to and following
4 the witness' meeting with the government, and the government
5 has evidence that the defendant knew that this witness had
6 received a grand jury subpoena. And both between — before the
7 meeting with the government and after the meeting with the
8 government, there were 14 total contacts between the two of
9 those people.

10 In another case, a witness was served with a grand
11 jury —

12 THE COURT: Hold on just a second. Go back for a
13 second. You said there were 13 contacts between two of those
14 people. You mean two witnesses or just between the defendant
15 and the witness?

16 MS. JOHNSON: I'm sorry for not being precise, your
17 Honor. There were 14 total contacts between the defendant and
18 the witness.

19 THE COURT: OK.

20 MS. JOHNSON: And my second example, a witness was
21 served with a grand jury subpoena in June of 2024; thereafter
22 was contacted multiple times by the defendant by phone and text
23 in June and July of 2024, despite the fact that the two had not
24 spoken in several years. They were suddenly back in contact
25 leading up to the defendant's — sorry, in the aftermath of the

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1 witness receiving a grand jury subpoena.

2 And these efforts by the defendant were also crafted
3 to avoid detection. He used intermediaries to reach out to
4 people. And in an instance I'll describe in detail, he
5 recorded conversations with a victim on the device of a
6 coconspirator. These kinds of efforts, these kinds of means,
7 make obstruction even more difficult to detect when it's being
8 done through other people and on other devices.

9 We know from the evidence we've collected that the
10 purpose of these calls was to spread false narratives. So
11 here's an example. The instance that I mentioned where the
12 defendant directly contacted a victim in November 2023, he
13 placed two calls to the victim, both of which are recorded on
14 the coconspirator's phone. And as background that will help
15 explain some of the things that are discussed in the call, the
16 defendant provides financial support to this person. So early
17 on November 19, which is three days after the filing of the
18 civil lawsuit by another victim, the defendant received a text
19 from this other person in response. It reads:

20 "I feel like I'm reading my own sexual trauma. It
21 makes me sick how three solid pages, word for word, is exactly
22 my experiences and my anguish."

23 The defendant then called the victim twice. Those are
24 the recordings. And in those recordings, he gaslit her and he
25 attempted to convince her that she had willingly engaged in sex

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1 acts with him, but she pushed back. She told him she felt
2 manipulated and clarified that what his description of events
3 was, was "not how she saw things."

4 Throughout these recorded calls, the defendant
5 repeatedly talks about how he was not supposed to be speaking
6 on the phone and not supposed to be using the phone, and he
7 instructs the victim not to text him. These statements clearly
8 show his state of mind. They show that he was on notice that
9 there could be an investigation into the claims raised in the
10 lawsuit that had been filed three days earlier.

11 And at the end of that second call, the defendant
12 ensured the victim that if she continued to support him, she
13 ain't got anything to worry about, which is a thinly veiled
14 reference to his continuing his financial support. And
15 subsequent text messages make explicitly clear that that's what
16 he was talking about because two days later he texts a
17 coconspirator in reference to the financial support that he
18 provides to this victim and said: "Make sure that" — and he
19 uses a name here. The name is an individual who is his
20 financial adviser — "is not doing anything dumb, like not
21 having that rent paid on time." The defendant made sure that
22 that financial coercion continued, clearly, to keep the victim
23 close and in his control.

24 The defendant's long history of obstruction and
25 violence demonstrates that he simply cannot overcome the

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1 presumption that no condition or combination of conditions can
2 ensure the safety of the community or the integrity of this
3 proceeding. Courts have denied bail in similar situations.
4 We've cited some cases in our letter. Of particular interest,
5 I think, is *United States v. Lafontaine*. And this is a
6 slightly different posture because it's a revocation, but the
7 facts of that case are that the defendant contacted a potential
8 witness and attempted to feed that witness a false narrative
9 with the hope that the witness would adopt it as that person's
10 testimony, and that's exactly what's going on here.

11 In the government's request for detention is
12 consistent with other cases of this kind in this district and
13 in this circuit. These cases stand for the proposition that
14 sex trafficking defendants, regardless of the age of their
15 victims, are routinely detained pretrial, particularly when
16 they have engaged in repeated obstruction. I went over some of
17 these cases yesterday. I'll touch on them lightly again.

18 THE COURT: That's not necessary. I'm familiar with
19 those cases.

20 MS. JOHNSON: OK.

21 THE COURT: Let me ask you this: In the record, the
22 government had previously indicated that there was another
23 potential witness that the defendant contacted between
24 September 10 and September 14 some 58 times. Can you give me a
25 little further elucidation on that?

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1 MS. JOHNSON: Oh, sure. So that requires a little
2 explanation of a recent civil suit.

3 So on September 10, so last week, an individual named
4 Dawn Richard filed a civil suit against the defendant and other
5 individuals and entities. Ms. Richard was formerly in a band
6 with the defendant and a third individual named Kalenna Harper.
7 The allegations in Ms. Richard's lawsuit focus on some of the
8 time period of the charged conspiracy. They focus on
9 particular events starting in 2009 and for some time period
10 thereafter. Among other things, Ms. Richard alleges witnessing
11 violence by the defendant towards a victim, including assaults
12 and the like.

13 So that lawsuit is filed on September 10. On
14 September 13, the other member of the band, Ms. Harper,
15 released a statement where she, in sum and substance, sort of
16 says what Ms. Richard's experience wasn't what I experienced.
17 But between those two dates, between September 10 and
18 September 14, the defendant and Ms. Harper had 128 total phone
19 contacts. He called or texted Ms. Harper 58 separate times in
20 four days. There has been no contact since September 14.
21 Granted, that's only been a few days. But I think what's
22 highlighted about that incident is that it makes clear that the
23 defendant has an ongoing ability to keep witnesses, even
24 witnesses to very distant abuse and very distant things, in his
25 pocket and at his disposal.

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1 One other — your Honor, we had discussed some cases
2 yesterday. We didn't discuss *Lawrence Ray*, which I think is
3 another case that does support our argument here. I don't
4 think we've touched on that, so I'll just briefly —

5 THE COURT: The case dealing with the official
6 proceeding requirement?

7 MS. JOHNSON: No. *Lawrence Ray* is a racketeering and
8 sex trafficking case in this district, and Magistrate Judge Fox
9 ordered detention based on risk of flight and dangerousness.
10 And I think one thing that's similar about the *Lawrence Ray*
11 case to this case is that, in the bail argument, there's
12 allegations by the defense that the sex trafficking case was
13 weak because there was only one victim, and Magistrate Judge
14 Fox again detained on the basis that the victims were
15 corroborated not only by other witnesses but also by
16 documentary evidence.

17 THE COURT: Anything else from the government?

18 MS. JOHNSON: Just a few additional things, your
19 Honor, briefly.

20 THE COURT: How many more additional things? We've
21 gone about 45 minutes. Give me a sense of what else you need
22 to touch upon.

23 MS. JOHNSON: I can finish this in under five minutes;
24 maybe even three.

25 THE COURT: OK. Go ahead.

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1 MS. JOHNSON: OK. I will just touch briefly on risk
2 of flight. The circumstances are different than when Mr. Combs
3 flew here to sit in New York, which defense counsel has made a
4 lot of hay about. And with respect to his offer to surrender,
5 there are extremely valid law enforcement reasons why the
6 government did not take him up on this offer, including the
7 risk of evidence destruction and allowing for further
8 obstruction. So to the extent that this surrender and travel
9 argument has any force at all, it really only applies to risk
10 of flight. It does not, does not, grapple with dangerousness
11 and obstruction. Surrender has nothing to do with those two
12 things. And the defendant really does not grapple with those
13 two things. He doesn't talk about his ongoing danger and his
14 ongoing obstruction. So coming to this jurisdiction and
15 offering to surrender simply does not vitiate those concerns.

16 The Court expressed concerns with the bail package.
17 The government has significant concerns with the bail package.
18 Again, I'm here seeking detention, so I'm not going to get into
19 those, but I note for the record that we do think that even the
20 supplemented bail package does not have enough conditions that
21 focus on obstruction, and we don't think there are conditions
22 that can really keep the defendant from doing the types of
23 things he's been doing, particularly because he's been
24 involving other people in them.

25 You'll hear later today about how much evidence we

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1 have, and it was in the record yesterday. There's a massive
2 amount of evidence. There's a massive amount of witnesses, a
3 massive amount of electronic evidence. There's a massive
4 amount of physical evidence that we seized. We have witnesses
5 saying things, and these witnesses are powerfully corroborated
6 by communications, by photographs, by videos, by
7 contemporaneous documentary records, by text messages, and the
8 like. And this is the evidence that we will use to prove the
9 charges in the indictment. This is the same evidence, some of
10 which, just a little bit of which I've highlighted today,
11 confirms that the defendant is a danger to the community and
12 poses a serious risk to the integrity of these proceedings
13 through his efforts at obstruction.

14 So for all the reasons I've stated here and in our
15 letters, the defendant should be detained pending trial.

16 THE COURT: Thank you.

17 Defense counsel, again, you can stand there, you can
18 stand at the lectern, or you can be seated — whatever you feel
19 comfortable doing.

20 MR. AGNIFILO: I'll come to the lectern, Judge. Thank
21 you.

22 THE COURT: OK.

23 MR. AGNIFILO: Your Honor, I'm going to address one
24 thing that my colleague said, and then I hope to address your
25 Honor's opening remarks directly.

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1 The situation that my colleague just discussed with
2 Dawn Richard and Kalenna Harper I can shed some light on. At
3 one point I myself got a phone call from Kalenna Harper and her
4 lawyer. Without going too much down this rabbit hole, Kalenna
5 Harper said: I would like to make a statement on behalf of
6 your client. Her lawyer was on the phone saying: I'm worried
7 that my client, Kalenna, is going to embroil herself in this
8 big mess that has public elements to it and all that. And I'm
9 prepared to give the lawyer's name to the government and I'm
10 prepared to give, to the extent they don't have Kalenna
11 Harper's phone number, to the government, and they can follow
12 up on this. And what I said to Ms. Harper and the lawyer is
13 you should do whatever you want. You should feel free, if you
14 want to make a statement, to make a statement; and you should
15 feel free, if you don't want to make a statement, to not make a
16 statement. I don't remember offhand what day it was. It was
17 between the 10th and the 13th. And then at one point I found
18 out she made a statement.

19 THE COURT: The acoustics aren't great.

20 MR. AGNIFILO: I'm sorry, Judge.

21 THE COURT: You don't remember what?

22 MR. AGNIFILO: I don't remember the exact — it was
23 either the 11th or the 12th of September that I spoke to the
24 lawyer and Ms. Harper. And at the end of that conversation, it
25 was not clear whether Ms. Harper wanted to make a statement or

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1 not. Sometime later — and I think it was the next day or it
2 could have been two days later — I saw in press reporting that
3 she had made a statement.

4 So the reason I bring this to your Honor's attention
5 is there's a lawyer in the mix. Ms. Harper has a lawyer. I
6 spoke to the lawyer. I will make the lawyer available to the
7 government if the government wants to speak to the lawyer. So
8 to the extent that the government raises this because there's
9 some suggestion that because Mr. Combs contacted Ms. Harper —
10 and I would note that they were in the same band for a period
11 of time — but these contacts were around the time of the
12 statement. She seemed to be pained about whether she wanted to
13 make a statement. She told me she wanted to make a statement
14 because she believed Dawn Richard's statements were not
15 accurate. And she wanted to say something, yet she didn't want
16 to get overly involved.

17 THE COURT: When she told you that, that was either
18 September the 11th or the 12th?

19 MR. AGNIFILO: I believe that's right.

20 THE COURT: Which is after the 10th, after the
21 defendant first reached out to her?

22 MR. AGNIFILO: I don't know about the defendant's
23 contacts with her. I don't know. I just know when her and her
24 lawyer called me, it was the 11th.

25 (Counsel conferred)

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1 MR. AGNIFILO: I'm told by the keeper of the facts
2 that it was the 11th. So I think it was probably September 11.

3 But let me address — so I wanted to point that out
4 just because that was the last thing that my colleague said.

5 THE COURT: Let me ask you, why does that matter?

6 MR. AGNIFILO: Because the government brought it up,
7 and the government brought it up, I think, to suggest that
8 somehow Mr. Combs coerced or forced or pressured Kalenna Harper
9 into — let me take a step back, because I don't think — the
10 entire context might not be clear.

11 I don't know what role Dawn Richards plays in this
12 case. I don't. She filed a civil complaint, so this is all
13 about a civil complaint. When the civil complaint hit the
14 news, Kalenna Harper, who was in the same band as Dawn
15 Richards, obviously, said to herself: I was in the same band
16 as Dawn Richards. I don't think — I didn't see any of those
17 things.

18 THE COURT: Let me just ask you something.

19 MR. AGNIFILO: Yeah, sure.

20 THE COURT: Hypothetically speaking, if your client
21 reached out to this person on September 10, hypothetically
22 speaking —

23 MR. AGNIFILO: Right.

24 THE COURT: — said, I want you to say this. Again,
25 very hypothetically saying — let's say he said, I want you to

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1 lie about what happened. I want you to tell this story, and
2 gives that information to her on the 10th. And then on the
3 11th, you get a call from her lawyer saying that she's
4 interested in maybe making a statement, but he's not clear if
5 she could make a statement.

6 If that hypothetical situation happened, wouldn't that
7 still be evidence of an obstructive mind, mindset, of a
8 willingness to tamper with a potential witness? I'm sure that
9 you're going to say that that person is not necessarily a
10 witness in this proceeding, and therefore I shouldn't consider
11 that. But wouldn't that be evidence of a mindset that's
12 willing to tamper with witnesses or obstruct justice. Because
13 I'm sure you would agree, you don't have to coerce someone in
14 order to obstruct justice, correct?

15 MR. AGNIFILO: I agree with you. I agree with your
16 Honor. And I think if your — your hypothetical is a
17 hypothetical, and I accept your hypothetical as that.

18 Yes, you might be right. I wouldn't necessarily know.
19 But what I — the reason I wanted to speak to her — and
20 Ms. Geragos remind me that we spoke to her on the 10th as well.
21 And she's coming with her computer. We're going to get some
22 accurate facts, probably more specific than I'm saying.

23 MS. GERAGOS: Your Honor, I just want to say we did
24 speak to her. I spoke to her, I'll say, for 30 minutes on the
25 early morning of the 11th so that she could recount her facts

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1 to us as to her — she's mentioned in the lawsuit about 34
2 times, so she felt that her name was also being besmirched in
3 terms of she had witnessed violent acts by Mr. Combs against
4 the Victim-1 of Count Two. And so I believe the contact with
5 this potential witness was also a potential defense witness for
6 us to speak to because she was mentioning violent acts with
7 respect to the person who is now Victim-1 of Count Two. So we
8 did speak to her that night because we thought it was important
9 in terms of our defense investigation.

10 That's all I have to say. I'll let —

11 THE COURT: I'm sorry.

12 MS. GERAGOS: I'll let Mr. Agnifilo —

13 THE COURT: Go ahead and continue. I didn't mean to
14 cut you off.

15 MS. GERAGOS: No, I'll let Mr. Agnifilo continue. He
16 wasn't on that call, so I just wanted to make that
17 representation.

18 THE COURT: That was on the 11th?

19 MS. GERAGOS: That was, I think, maybe even 2:00 in
20 the morning on the 11th.

21 THE COURT: OK. But after speaking to defense counsel
22 on the 11th, what would be the reason for her and Mr. Combs to
23 keep in contact? I saw in the record here defense counsel was
24 making a statement that Mr. Combs was reaching out to witnesses
25 just to line witnesses up. If this witness has already spoken

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1 to defense counsel, what would be the purpose of Mr. Combs
2 continuing to speak to that witness after September 11?

3 MS. GERAGOS: After — after —

4 THE COURT: After your conversation with the witness,
5 why would he need to reach out to her?

6 MS. GERAGOS: Your Honor, I can't speculate only to
7 say that I think that this witness was really upset by the fact
8 that she kept getting publicized in many different articles
9 about incidents that she was supposedly present at that she
10 just was not — that she stated, at least to us, that she was
11 not present for. And that's my speculation. I don't know
12 if —

13 MR. AGNIFILO: No, I understand your Honor's question,
14 and I don't know that all of these things resulted in
15 conversations. I don't have access to the government's
16 evidence on this point, so I don't know that all these things
17 resulted in conversations. Obviously, she wanted to speak to
18 Mr. Combs because her name was in this civil suit, and she
19 didn't want the name in the civil suit. And she also wanted to
20 say I didn't see any of these things happen.

21 To the point that Ms. Geragos raised, in addition to
22 being named in the civil suit, she also may be an important
23 defense witness for conduct that may or may not be charged as
24 part of the indictment because it relates to the person who's
25 in Count Two. So this is an important defense witness. It's

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1 someone we will speak to.

2 But I want to allay the Court's larger concerns, and
3 then we can come back to this. Because I am hearing the Court
4 loud and clear, and I have actual proposals that I think will
5 assist in showing the Court that we are taking the Court's
6 concerns very seriously.

7 I have brought to court today, in the fourth row, the
8 handsome man who lost his hair at some point is there. His
9 name is Herman Weisberg. Herman Weisberg owns SAGE
10 Intelligence. He's a former New York Police Department
11 detective. He worked in the DA squad, and he's had SAGE
12 Intelligence for, I think, about 15 years. And here's what we
13 are proposing, in addition to all of the other conditions that
14 we have in our bail proposal:

15 That SAGE, personnel from SAGE Intelligence — all of
16 whom will be former law enforcement officials, either federal
17 law enforcement officials or state law enforcement officials —
18 will be monitoring the residence of Mr. Combs 24 hours a day;
19 24 hours a day, seven days a week. Here's what this will
20 involve.

21 They will have at least one, and probably two, SAGE
22 employees there at all times. They will basically have full
23 control of who enters and who doesn't enter. There will be a
24 visitor's log that is kept and that we could have it shared
25 with Pretrial Services every week or every day or whatever we

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1 would like to do in those regards.

2 Mr. Combs will not have access to a cell phone. Since
3 there will be a SAGE personnel on-site, if we want to reach
4 him, we can reach him that way. He won't have access to the
5 Internet. So what I am trying to fashion is a situation where
6 any witness intimidation, if that is the Court's concern, and I
7 see that it is, would be completely nullified. It would be
8 virtually impossible. And SAGE would monitor these things —
9 make sure he doesn't have a cell phone, make sure that anybody
10 who comes to the house is on the preapproved list of visitors,
11 would keep track of all the visitors. And we can make that
12 list of visitors and provide it to the government, to pretrial,
13 and the Court.

14 SAGE would establish communications with local law
15 enforcement in Florida, if need be. If there is some emergent
16 matter, SAGE would contact local law enforcement. And what we
17 could do, Judge, and what we're willing to do is put together a
18 protocol so that the Court is absolutely satisfied and
19 comfortable that there is quite literally no way that Mr. Combs
20 would be able to conduct any kind of contact, have any — do
21 anything with a witness of any nature.

22 One thing that I want to make clear, in light of the
23 government's proffer today — and I'm not going to go through
24 all of the things that I said yesterday. Your Honor read the
25 transcript, and I don't need to go through them all again — is

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1 we believe we have very significant defenses to everything that
2 the government has said, and we have been conducting, on the
3 defense side, a very significant investigation for six months.
4 And I anticipate that is only going to increase as we get
5 closer and closer to a trial.

6 So we will conduct the investigation, meaning the
7 lawyers and the investigators. Obviously, Mr. Combs will have
8 no role in that. Mr. Combs will not contact anybody who is not
9 on the preapproved list. We will ensure that that's the case.
10 And if he fails to do that in any way, shape, or form, we would
11 explain to Mr. Combs that that would be a violation of his
12 release conditions, and he should expect to be incarcerated.
13 And that is an obviously real concern because, getting ready
14 for this — Mr. Combs would be in the special housing unit if
15 he was incarcerated in the MDC. That presents tremendous
16 challenges to us. Given the amount of electronic evidence,
17 it's a very difficult place to be as an inmate, and it's a very
18 difficult place to get ready for any trial, much less a trial
19 with a tremendous amount of discovery, as this case has.

20 So he knows the stakes. I will put something in place
21 that would give the Court and Pretrial Services and the
22 government assurance that nobody will be contacted unless that
23 person is on the preapproved list. That would be monitored by
24 the people at SAGE. And we are at risk of Mr. Combs being
25 incarcerated if anybody falls down on the job. If Mr. Combs

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1 does something he's not supposed to do, if SAGE somehow misses
2 Mr. Combs doing something he's not supposed to do, if his
3 lawyers miss Mr. Combs doing something he's not supposed to do,
4 we know what the consequences would be.

5 So I'm listening to your Honor loud and clear. And
6 I'm going to address risk of flight in a second because the
7 government's still moving on that theory, but I do want to
8 assure the Court that we are prepared to put in strenuous and
9 maybe unusual conditions to meet the Court's concern when it
10 comes to these important matters.

11 Now, that is not to say that I agree with the
12 government's assessment of whether these things are obstruction
13 or not obstruction. That's an issue for another day, and I'll
14 take it up on the other day. What I'm here to do today is to
15 address your Honor's concern. When your Honor came out on the
16 bench, your Honor shared your Honor's thoughts with us, and I
17 listened loud and clear. And I want to address those thoughts,
18 and I want to address those concerns directly. And through
19 having SAGE Intelligence, their former law enforcement
20 officers, on-site 24 hours a day — and we'll do whatever needs
21 to be done. If we need two of them, we'll have two of them.
22 If we need three of them, we'll have three of them. And we'll
23 put everything in place that we need in terms of visitors
24 coming in, visitors who aren't on the list and who can't come
25 in, that will all be done. That will all be monitored, and we

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1 will all know what's being done in that regard. So that is how
2 I intend to deal with that.

3 Mr. Combs, like I said, would not have a cell phone.
4 He would not have any ability to use the Internet. And that
5 would, I think, come a long way to giving the Court greater
6 comfort in this regard.

7 I do want to address another issue, because I don't
8 believe that the actions that Mr. Combs has taken in regard to
9 surrendering his passport and coming to New York are only in
10 regard to risk of flight. I disagree with my colleague's
11 assessment in that regard. Because I think what it shows is
12 that he is deeply respectful of the Court's authority. He is
13 willing to show that he is responsible, that he can follow
14 these directions, and that he is mindful and has been mindful
15 — and this is important — he is mindful and has been mindful
16 for a very long time that this is a significant investigation
17 and that the charges could be significant; not significant
18 because they're true, but significant just because they're
19 weighty charges. And with the sex trafficking count, at a
20 minimum, it has a rebuttable presumption of detention, so I
21 want to put these in somewhat of a different light. And I
22 won't belabor it because I know your Honor read this already.

23 When we told the government on April 1, all those
24 months ago, that we had Mr. Combs' passport, we were giving the
25 government an assurance: He was not going to travel

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1 internationally, which he hasn't, and that the government would
2 know where he is. Mr. Combs was willing to do that because he
3 understood that this was a significant investigation.

4 Now what I want to point out in this regard is this:
5 Back on April 1, when we sent the email to the government and
6 said that we have Mr. Combs' passport, we specifically went
7 through the charges that we believed they were looking into,
8 and we specifically mentioned racketeering conspiracy, we
9 specifically mentioned sex trafficking, and we specifically
10 mentioned violation of the Mann Act. We mentioned all three
11 counts that ended up being in the indictment.

12 So back on April 1, we knew exactly the nature of this
13 investigation, and it turns out we were right. But the
14 significance isn't that we're right. The significance is that
15 we knew it was substantial, and even in the face of a
16 substantial investigation, Mr. Combs surrendered his passport.
17 Now, but that wasn't all.

18 THE COURT: Just to be clear, when you're saying "we,"
19 you're including your client, Mr. Combs, in that; that he was
20 aware of that at least by April 1?

21 MR. AGNIFILO: 100 percent. Just to make it clear,
22 Ms. Geragos and I flew to Florida. We sat with Mr. Combs in
23 his house in Florida, and we said: You are being investigated
24 by the Southern District of New York for a number of serious
25 charges. Let me tell you what they are. It's racketeering

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1 conspiracy. It's sex trafficking. It's obstruction of
2 justice. It's prostitution, Mann Act-type prostitution. I
3 mean, we were right because we knew what they were looking
4 into. We also knew it because there was a search warrant, and
5 the search warrant had crimes in it. So he knew. He knew on
6 April 1 exactly what they were looking into.

7 Now, the government in their letter to your Honor
8 today somehow makes an argument that this is like defense
9 lawyer — I think they call it defense lawyer theater, but it's
10 not theater at all. It's actually a person showing tremendous
11 respect for the process and showing the Court that he can be
12 trusted because what he also — what we went also on to do is
13 we took the passports of five of his family members. And
14 members of his family and friends are here today in the second
15 row. They love him. They support him. And many of them gave
16 us their passports over the last several months.

17 We also made efforts to sell his airplane, which is in
18 the process. We have a letter of intent to sell the airplane.
19 Because I was concerned that, if he had access to an airplane,
20 that would give your Honor concern; that would give the
21 government concern. I credit the government for not raising it
22 as a concern, and I think it's not a concern because we're
23 selling it. But the significant thing is we had the foresight
24 to try to sell it. Apparently, selling an airplane is not an
25 easy thing to do. We've had three different buyers who didn't

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1 work out. We're on, I think, the fourth buyer, but, hopefully,
2 we'll actually sell it this time. In the meantime, we will
3 make sure that Mr. Combs is not — so let me just back up for a
4 second.

5 Because he is not using the plane, no plan on using
6 the plane anytime in the near future, it gets chartered,
7 because the plane has to keep flying or the plane apparently
8 starts to fall apart. So it gets chartered, and it's being
9 chartered. It's being chartered by other people in sort of a
10 public way.

11 THE COURT: Can you just get to the point where you
12 said that this doesn't relate simply to risk of flight.

13 MR. AGNIFILO: Yeah.

14 THE COURT: Can you tell me what this relates to
15 otherwise.

16 MR. AGNIFILO: It shows respect for the Court. It
17 shows that he's trustworthy. It shows that he is showing that
18 this is a serious process to him. Your Honor must have seen
19 defendants who thumb their nose at the court and say: Come
20 find me. I'm not going to show the court the due respect that
21 it deserves. I'm not going to do the things to show the Court
22 that I'm trustworthy. Some defendants flee outright. In some
23 of the cases that are distinguishable and your Honor's read,
24 like *Maxwell* and *Epstein* —

25 THE COURT: How does that relate to dangerousness

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1 generally or danger of obstruction? Because it seems to me
2 that it may — what you've said relates to danger of
3 obstruction, but not in a good way for you. If he's aware of
4 this April 1, 2024, then, again, why is he contacting witnesses
5 in June and July of 2024?

6 MR. AGNIFILO: So I have an answer. A witness
7 contacted him. I think I know what they're talking about. And
8 a person contacted my client on Signal, so it doesn't show up,
9 and wanted to talk to him, and he spoke to her. And the
10 witness — I'll tell you exactly what happened. And the
11 witness told him I'm a grand jury witness. He told us that,
12 Ms. Geragos and I, and we said: Don't talk to her anymore.
13 And he didn't talk to her anymore, and that was that.

14 She contacted him, if it's the thing that I'm thinking
15 about, and I think I'm right. So that is not him reaching out
16 to a witness. He did not reach out to grand jury witnesses. I
17 dispute that wholeheartedly. He didn't do it and he wouldn't
18 do it. And he wouldn't do it because he has the sense not to
19 do it, and he wouldn't do it because we wouldn't let him do it,
20 you know. So as much as we —

21 THE COURT: OK. Let's get back to, again, this point
22 that you're making. This all seems to be that this is just
23 related — this is again cabined to risk of flight. So tell me
24 again why surrendering of the passports and everything has
25 something to do with danger. You're saying it shows respect

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1 for the court, respect for the proceedings. That seems
2 quintessentially like risk of flight.

3 MR. AGNIFILO: Because I think part of — defendants
4 who are dangers, once the court process starts, are people who
5 have disregard for the court. It's contemptuous of the court.
6 They are doing things, they're engaging in conduct that they
7 know is contemptuous of the court. And everything that
8 Mr. Combs has done has shown he is not and has never been
9 contemptuous of the court. In fact, his whole life has been
10 the exact opposite.

11 And it's important that I bring this up to your Honor
12 because I think it's a serious consideration. It's not on his
13 rap sheet because he was acquitted, but it's well known that
14 between 1999 and 2001, he had a very significant criminal case
15 in Manhattan. He went to trial, and he was acquitted. And
16 during that over one-year period, he went to court every time
17 he was supposed to. During that over one-year period, there
18 were no issues with witnesses. There were no issues with
19 danger. And he abided by the process. He showed respect for
20 the court. He came to court every day. He went to trial, and
21 a jury of 12 New Yorkers found him not guilty.

22 So this is someone who actually has shown that, when
23 the chips are down, when the pressure is on, he doesn't do
24 anything that he's not supposed to do. He shows up on time.
25 He shows up every day. He didn't do anything with witnesses.

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1 He didn't do anything dangerous. And that is a track record.
2 That happened. That's not just his lawyer making an argument.
3 That's the truth, and that's in the record. That happened.
4 There is no issues with him for that over one-year period, and
5 he went to trial and was acquitted. And he's going to show the
6 exact same respect for this Court.

7 So the reason it relates to danger and the reason it
8 relates to the government's concerns of witness intimidation is
9 because he hears the Court loud and clear. There's a case now,
10 and he is going to do everything right from this point forward.
11 And I'm not asking your Honor just to trust him. I am asking
12 your Honor to trust him, I am, but not that alone. I'm saying
13 that if we put in place the different measures that I have in
14 the bail package and the letter that we submitted to the Court,
15 along with SAGE Intelligence — which we didn't name them, so I
16 understand why the government thought that we were going to use
17 the same security service that's been in place all this time,
18 but that was never the plan. The plan was always to use a
19 company like SAGE Intelligence, and that's the plan now —
20 that, in addition to the fact that he's shown that he is
21 trustworthy — and I believe he has because I believe the
22 incidents that the government's talking about do not amount to
23 witness intimidation in the slightest — that we have in place
24 a foolproof system that will give the Court what it needs. He
25 is not going to contact anybody. He is not going to reach out

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1 to anyone, and he's going to let his lawyers do the defense
2 investigation, as we should.

3 THE COURT: But tell me more about this allegedly
4 foolproof system that you're proposing. Under the system,
5 would Mr. Combs still have employees?

6 MR. AGNIFILO: He will have employees. He has
7 employees. He has, you know, people who manage his finances.
8 They're not necessarily in the same house. They're located in
9 California. But he does have employees.

10 THE COURT: Would it be necessary for him to speak
11 with these employees or have someone on his behalf speak with
12 these employees?

13 MR. AGNIFILO: We could work that out. There's going
14 to have to be some way of communicating with the employees,
15 some form or fashion of doing that. I mean —

16 THE COURT: And under your proposal, would Mr. Combs
17 be able to leave the residence?

18 MR. AGNIFILO: No, I don't anticipate that he will.

19 THE COURT: Would your proposal be the security
20 company — you said they'd be there.

21 MR. AGNIFILO: Yes.

22 THE COURT: What does "there" mean?

23 MR. AGNIFILO: So there is — his home in Florida is
24 the one that we're looking to secure the bond. It is in Miami.
25 He would live there and the security personnel would live there

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1 as well. I mean, they would probably do it in shifts. I don't
2 exactly know how, but they'll probably do it in eight-hour
3 shifts and rotate in and out. But there will be —

4 THE COURT: But the proposal is that they would just
5 be in the house, not sitting there looking at him the whole
6 time, correct?

7 MR. AGNIFILO: I don't know that they would need to
8 sit there and look at him. I think what we could do is we
9 could put cameras. We could put cameras at the entrances that
10 are filming 24 hours a day, and they would be in the house and
11 aware of the goings-on. If there were requirements that he
12 don't have a cell phone, we could find ways of doing
13 spot-checks to make sure that he's not on a cell phone. If the
14 requirement is that he doesn't use the Internet, we can do
15 spot-checks that he doesn't use the Internet. But we can make
16 it as secure as we need to make it.

17 And let me just add, there are already — and the
18 government knows this because I think they took a lot of the
19 footage back on March 25 — there are cameras in different
20 parts of the house, so all we would need to do is kind of keep
21 those cameras rolling. I'm happy to share the footage with
22 anybody who wants it. But what we would do is we would monitor
23 those cameras, in addition to physically monitoring the
24 situation with the officers on-site.

25 THE COURT: Who would be living in the home with him?

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1 MR. AGNIFILO: One second.

2 (Counsel conferred with defendant)

3 MR. AGNIFILO: I think we can arrange things so he's
4 the only one living there and that SAGE would be working there,
5 doing security, and he'd be the only one actually residing at
6 the house.

7 THE COURT: But there would be visits from family
8 members and employees and friends and the like, correct?

9 MR. AGNIFILO: Assuming that those people are — we
10 will put a list together, we will share it with everybody who
11 wants to see it, and those would be the people who visit. And
12 nobody else would visit because SAGE won't let them in.

13 THE COURT: Go ahead. Is there anything else? You
14 want to address the violence and danger more generally?

15 MR. AGNIFILO: Sure. Yes, Judge.

16 THE COURT: I know you made some statements before
17 regarding the 2016 video incident.

18 MR. AGNIFILO: Yes, Judge.

19 THE COURT: Again, that video is quite disturbing.
20 And it was eight years ago, but he's still 46, 47 years old at
21 the time this is taking place.

22 MR. AGNIFILO: He was.

23 THE COURT: And this was after his acquittal on the
24 state court charges.

25 MR. AGNIFILO: It was. So let me shed some light.

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1 Your Honor asks a good question. I think there's an answer to
2 it.

3 In the weeks and months after the video, Mr. Combs
4 realized he has a problem with drug addiction and he has a
5 problem with anger, and he went and — he went into a rehab
6 program for a period of time. I don't want to get too much
7 into this, but it's significant. The person — the woman in
8 the video also went into rehab around the same time.

9 The point is this was a ten-year relationship that was
10 very loving at times. These people loved each other, and I
11 don't think there's any other view of the relationship than
12 that because they're just — the written messages are — it's
13 heartbreaking. It's sort of a heartbreaking relationship in
14 many ways because they really did love each other. And I think
15 what the government is doing — and I'm not saying this in a
16 bad way — but I think the dynamic of the case that I object to
17 most, most respectfully, is this: The sex and the violence
18 were totally separate and motivated by totally different
19 things. The way that this couple chose to be intimate was the
20 way that is — they would bring a third party into their
21 intimacy. That was their thing. That is how these two adults
22 chose to be intimate. And the written communications, Judge,
23 are overwhelming, overwhelming, that this is so. Not only that
24 it was with consent, it was — it was a sought-after, special
25 part of their relationship. And in some ways —

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1 THE COURT: What does this have to do with him
2 punching her, throwing a vase at her, kicking her? What's love
3 got to do with that?

4 MR. AGNIFILO: It's a good question, and the answer is
5 it has nothing to do with because that's not what motivated
6 that stuff. The intimacy is over here, OK? All of the
7 problems are not related to the intimacy. The problems are
8 related to jealousy from infidelity. That is where the
9 problems come. You have jealousy from infidelity. You have
10 arguments. You have fights. You have things like you saw on
11 the video because of jealousy due to infidelity in both
12 directions, in both — on the part of both participants,
13 Mr. Combs and this other person. It's mutual. And the
14 violence is from that 100 percent, and the written
15 communications make that clear.

16 THE COURT: Let me just make sure I understand your
17 point on this.

18 MR. AGNIFILO: Yes, your Honor.

19 THE COURT: What is your point on this? You're saying
20 that that's the reason that he — because of jealousy, that's
21 the reason, because they had an argument, that that's the
22 reason that he punched her, threw a vase at her, and kicked
23 her?

24 MR. AGNIFILO: I'm saying it's not sex trafficking.
25 The government is linking the two, and in the linkage they find

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1 sex trafficking.

2 THE COURT: The government's also talking more
3 generally about violence against women and violence against
4 this particular woman who the government claims was sex
5 trafficked.

6 And let me ask you this thing: If you're talking
7 about — to the extent that you claim that this sort of
8 behavior was — that inviting another person into the
9 relationship was somehow consensual, if that person is a sex
10 worker or prostitute and travels across state lines, isn't that
11 a problem regarding Count Three of the indictment?

12 MR. AGNIFILLO: It may or may not be. I have spoken to
13 the people from this agency, and what they uniformly say is we
14 are not paid to have sex. We are paid for our time. And if we
15 meet somebody and it goes in that direction and everybody wants
16 to do this and there is sexual contact, then that sometimes
17 happens.

18 And, listen, at the end of the day, the one-time
19 governor of New York was investigated by the Southern District
20 of New York because he was sleeping with \$5,000-an-hour
21 prostitutes while he was the governor, and they didn't
22 prosecute him. They are prosecuting Mr. Combs for the exact
23 same type of conduct.

24 So, yes, let's assume for a second — let's assume for
25 a second your Honor's question is right. OK? That is — it's

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1 not sex trafficking. It's not sex trafficking, that's my
2 point. The reason we're really here and —

3 THE COURT: That would be a crime. That would be a
4 federal offense.

5 MR. AGNIFILO: No, I don't think that's true because I
6 don't know that, if you read the Mann Act, the consumer of the
7 intimacy is within the purview of the Mann Act. My read of the
8 Mann Act is that it's about the business of sex, and there is
9 no argument that Mr. Combs was involved in the business of sex.
10 That's not the argument.

11 THE COURT: Let's get back to that video and the
12 physical beating.

13 MR. AGNIFILO: Yes.

14 THE COURT: Why isn't that relevant to a consideration
15 as to danger to the community more generally and acts of
16 violence against women and what the government has alleged
17 here?

18 MR. AGNIFILO: Judge, I think it's relevant. I think
19 it is relevant. I haven't said it wasn't relevant. I'm saying
20 it's not part of the sex trafficking. That's my theory, that
21 it's not part of the sex trafficking. Is it relevant? Your
22 Honor's going to look at the video the way everybody looked at
23 the video, the way Mr. Combs looked at the video. Mr. Combs
24 issued an apology after the video, and I'm not going to undo
25 his apology. It's a hard video to watch. It's an upsetting

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1 video to watch. It was an upsetting video to watch for
2 everyone, but that doesn't mean he should be incarcerated.

3 It's eight and a half years ago. He went into rehab
4 since then. He has done tremendous things to try to change as
5 a person since then, and he's not the same person he was then.
6 He was in a relationship that was a toxic relationship. And
7 probably the best single thing, both for him and the woman
8 involved, is that they broke up and they both went their
9 separate ways seven years ago at this point — six years ago.
10 Six years ago they broke up at this point, and sometimes that
11 happens in life.

12 You know, Mr. Combs has the unfortunate reality that
13 one of the worst things he's ever done was on videotape. I'm
14 glad that didn't happen to me. None of us should be that
15 unlucky. But one of the worst things he ever did happens to be
16 on videotape, and it will one day be played at his federal
17 trial, and we'll deal with it when it is. So I'm not asking
18 your Honor to ignore it. I'm not ignoring it. But I don't
19 think it's dispositive, and I don't think, in and of itself, it
20 means that he should be detained pretrial.

21 We have defenses to the charges. That's the point.
22 We have defenses to the charges, real defenses. This is going
23 to be a trial one day, 100 percent. He's not going to plead
24 guilty to racketeering and sex trafficking and those things.
25 He's not. So this is going to be a trial. And I am asking

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1 you, because it's so critically important, we have proffered,
2 your Honor, a very substantial bail package. And him coming to
3 New York, Judge, I think, also is not just important in terms
4 of risk of flight; I think it's important for every aspect of
5 what we consider when we think about bail.

6 I mean, this is a man — we had a meeting with the
7 government. Ms. Geragos and I met with my colleagues to my
8 right here, I think it was, September 3. It was a day after
9 Labor Day, the Tuesday after Labor Day. And Ms. Geragos and I
10 left that meeting, and I realized they were going to return an
11 indictment soon. I didn't know if soon was a week. I didn't
12 know if soon was a month. I didn't know if soon was three
13 months. I got on the phone with Mr. Combs the next day, and I
14 said you should consider coming to New York because I think
15 they're going to charge you soon.

16 He got on a plane on September 5 and came to New York,
17 and he came to New York to turn himself in. He came to
18 New York to surrender. And I told my colleagues, he's here.
19 He wants to surrender. Just give him a time, and he'll be
20 there. I understand that they don't have to do it, and they
21 didn't do it. They told me they would get back to me, and then
22 he got arrested. And that's OK. That's OK. But the fact that
23 he got on an airplane to come to New York when so many
24 defendants, Judge, get on an airplane or a bus or a train, or
25 whatever, and run as far away from the place of danger as

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1 possible. The fact that he did the exact opposite is a weighty
2 consideration of him in general. And so when I say to the
3 Court that I want the Court to trust him, he has earned the
4 Court's trust.

5 And even if the Court doesn't fully trust him, trust
6 the package as a whole that I'm proposing with a \$50 million
7 bond, which is a tremendous bond, secured by about \$50 million
8 in equity with the cosigners that we've proposed; with the
9 passport surrendered that we've proposed, including his own
10 passport; with electronic monitoring; he stays in the house;
11 SAGE Intelligence supervises the house; we have a list of
12 permitted visitors; he doesn't have a cell phone; he doesn't
13 have any Internet access. And I believe that will do two very
14 important things: (1) It will give the Court comfort that he's
15 not a flight risk due to the conditions, he's not a danger,
16 he's not a danger of any witness obstruction with these
17 conditions, and it allows him to prepare for his trial in a
18 fair way.

19 And everything that we have been doing, we have known
20 this was coming. If he was going to run, if he was going to do
21 something reckless and stupid, he would have done it in March,
22 and he didn't. Instead, he gave us his passport, and we told
23 the government we had it.

24 This is someone who has worked hard his whole life.
25 We haven't gotten too much into his personal characteristics,

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1 but I think it's actually somewhat important.

2 He has — first of all, he has one misdemeanor
3 conviction from 29 years ago. That's it. He's 53 years old.
4 One misdemeanor conviction from 29 years ago. He was an actual
5 altar boy growing up. He's a very religious man.

6 THE COURT: How far back are you going now?

7 MR. AGNIFILO: The man has — I'm going back and I'm
8 talking about him as a person because it's all one continuum.

9 THE COURT: OK.

10 MR. AGNIFILO: He watches a sermon every day. He's
11 religious. He comes from a religious family. His father,
12 unfortunately, was killed when he was two years old. He was
13 raised by his mother, who did a wonderful job with him. And he
14 has worked hard, and he has earned everything that he's ever
15 gotten in his life.

16 And the one thing that I'm asking your Honor for is to
17 see that he has done everything to earn the Court's trust. He
18 has done a great deal to earn the Court's trust. And I am
19 submitting that this very, very substantial package, both
20 what's in the written letter supplemented by what I said today,
21 and supplemented still further by SAGE Intelligence being
22 on-site — and we can have any protocol that your Honor sees
23 fit. We'll certainly suggest one, but if your Honor wants
24 something more or different, we can do whatever your Honor
25 thinks is necessary — that that, in combination, that

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1 substantial package means that he should be released to work on
2 his case, to meet with his lawyers. If we need to speak to him
3 by flying to Florida, we'll do that. He'll stay in his house
4 in Florida, and he'll do nothing but prepare for his trial.

5 So I'm asking you to release him on these very, very
6 strenuous conditions, Judge. Thank you.

7 THE COURT: Thank you.

8 All right. I've heard from the parties. I've
9 reviewed everything. I find that the government has proven
10 that the defendant is a danger regarding obstruction of justice
11 and witness tampering by clear and convincing evidence.

12 I also find that the government has proven that the
13 defendant is a danger to the safety of others in the community
14 more generally by clear and convincing evidence.

15 I need not reach the issue of risk of flight. Again,
16 I find that the government has carried its burden of persuasion
17 by clear and convincing evidence on dangerousness both for
18 obstruction and witness tampering, as well as danger more
19 generally, even if the defense has rebutted the presumption by
20 coming forward with their burden of production.

21 Regarding the bail package that has been proposed by
22 defense counsel in terms of risk of flight, I think it's
23 insufficient.

24 In terms of overcoming what the government has proven,
25 again, I'll say it this way: Again, the government has proven

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1 by clear and convincing evidence that there is no condition or
2 combination of conditions that will reasonably assure the
3 safety of a person in the community, as well that he will not
4 obstruct justice or tamper with witnesses.

5 There are issues also with what the defense has
6 suggested in terms of this SAGE Intelligence. Certainly, the
7 defendant would still have access to employees and other
8 individuals. And given what the government has proffered, he
9 could certainly obstruct justice and intimidate witnesses
10 through those folks, through even coded messages if necessary.

11 So I am denying bail, and I am granting the
12 government's motion.

13 We are scheduled to have an initial conference on the
14 24th. Since we're here, I don't know if we need to do that.
15 Perhaps we can just find out how counsel wish to proceed. I
16 know that Mr. Combs was already arraigned on the indictment.
17 So how do counsel wish to proceed? Let me hear from the
18 government first.

19 MS. SMYSER: Thank you, your Honor. Happy to give the
20 Court an overview of the discovery in the case and also the
21 government's proposed schedule.

22 So, first, I think it's important to note that your
23 Honor probably has seen this from the record so far, but there
24 is going to be a huge amount of discovery in the case. It's
25 going to consist of dozens of terabytes of data. Then I want

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1 to cover some of those categories of the Rule 16 discovery that
2 we'll be disclosing to the defense.

3 First, it will include grand jury subpoena returns.
4 For some context as to the volume of those returns, we have
5 served over 300 grand jury subpoenas in the case and gotten
6 returns from over 100 individuals and entities, including phone
7 companies, tech companies, social media companies, hotels,
8 airlines, some companies related to Mr. Combs himself.

9 Second, the Rule 16 discovery will also include search
10 warrants. We've obtained over 20 search warrants in the case,
11 including warrants for electronic devices and iCloud accounts,
12 including warrants for his historical and prospective cell
13 phone information and for a variety of persons, as well as for
14 Mr. Combs' residences.

15 Third, the discovery will include photographs of
16 physical evidence, including evidence that was collected from
17 his residences in March 2024, as well as from his hotel room a
18 few days ago, which includes freak-off supplies, narcotics,
19 firearms, and ammunition.

20 The discovery will also include a variety of law
21 enforcement reports and records, including from local law
22 enforcement.

23 And finally, there are a large number of electronic
24 devices in the case. Specifically, over the course of the
25 investigation, including in the past few days, the government

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1 has been collecting electronic devices and, in total, has
2 seized over 100 phones, laptops, tablets, and iCloud accounts,
3 as well as over 30 other kinds of devices. And here, I'm
4 talking about things like hard drives, flash drives, cameras,
5 DVRs. These devices are often large, sometimes hundreds of
6 gigabytes, sometimes terabytes, especially in relation to the
7 iCloud accounts.

8 Already the government has extracted approximately
9 half of those phones, laptops, tablets, and iCloud accounts.
10 And these devices are in the process of a privilege review,
11 varying stages of it, and they will then be reviewed for
12 identified data and — review, and we will produce that
13 identified data on a rolling basis to defense counsel as it
14 becomes available.

15 So although this is a large amount of discovery, we
16 have a plan for producing it to defense counsel.

17 First, before producing any discovery, as your Honor
18 might anticipate, we will need a signed protective order given
19 that the discovery will contain sensitive victim and witness
20 information, and we have, as we've discussed, real concerns
21 about witness tampering as well as with the sensitivity of the
22 victim information and statements that have been given to the
23 media so far. So we will start engaging in those discussions
24 with defense counsel today about negotiating the protective
25 order, and we'll let your Honor know if there are any issues

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1 with that process.

2 Second, soon after getting the protective order
3 signed, we plan to produce the affidavits related to the search
4 warrants that we've obtained in the case. As I said, there are
5 over 20 of them. Many of them have lengthy affidavits which
6 lay out large portions of the case and will assist the defense
7 in assessing whether there are motions that we would like to
8 make.

9 Third, within approximately 30 days of having a
10 protective order, the government would intend to make a large
11 production of discovery to the defense consisting of a variety
12 of things, including grand jury subpoena returns. But,
13 importantly, we are prepared to produce many of Mr. Combs' own
14 devices and accounts. We have approximately 35 full
15 extractions ready to produce to the defense. We anticipate
16 that the copying of those devices, given their size, will take
17 some time, but we will engage in that process as soon as we
18 can.

19 And, finally, our plan would be, after this initial
20 large production, to continue to make productions on a rolling
21 basis. And I just want to note for the Court that our
22 investigation in this case is very much ongoing, and we will
23 continue to produce the information that is in our possession.
24 And as we get more related to the new investigation, we will
25 also review that in accordance with our discovery obligations

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1 to produce to the defense.

2 We think it makes sense, in order to give defense
3 counsel sufficient time to review this discovery, to have a
4 status conference in approximately 90 days.

5 THE COURT: OK. Defense counsel, let me hear from
6 you.

7 MR. AGNIFILO: Yes, your Honor. I am — without
8 speaking to Mr. Combs in greater detail, in light of the fact
9 that he's going to be in the SHU of the MDC, I'm not in a place
10 where I'm prepared to consent to a speedy trial. I'm not
11 saying that I won't in the future, but this is a serious
12 conversation we have to have. And the fact that he is going to
13 be incarcerated is a significant factor. So I don't know that
14 I can consent to a 90-day adjournment for a status conference.
15 I think we want to reserve the right of moving much quicker
16 than that. The government arrested him, the government wants
17 him detained, and we're going to have to do everything possible
18 to move this along.

19 So where I am today is I'd like some time to speak
20 with him, and more than just a few minutes here. We need to go
21 through this in real detail. I also need to see what's going
22 to be possible in the SHU, and I don't know that I exactly know
23 that now in terms of what computer facilities are going to be
24 possible. And so at this point I'm not prepared to waive
25 speedy trial.

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1 THE COURT: So what do you want to do at this point?
2 Do you want to set a trial date? Do you want to, because I
3 would — well, I don't know.

4 Do you want time to review the discovery that's going
5 to be produced, do you want to come back in 45 days, or do you
6 want me to set a trial date? I can set a trial date if you
7 want me to set a trial date —

8 MR. AGNIFILO: I understand.

9 THE COURT: — whenever you want it. And if I can't
10 try it, I'll find a colleague who can if you want to set a
11 trial date.

12 MR. AGNIFILO: Can I just talk to the government for a
13 second? I just have a question.

14 THE COURT: Yes.

15 (Counsel conferred)

16 MR. AGNIFILO: I have a proposal. Would your Honor be
17 amenable to a status conference in somewhere between 14 and 20
18 days? And in the interim, what I think we'll have a better
19 handle on is how Mr. Combs would be able to look at the
20 discovery, what discovery will be available when, and what,
21 from a technical perspective, he'll be able to look at and with
22 what level of difficulty.

23 So my ask of the Court is that we have a shorter
24 turnaround time for a status conference, and whatever's good
25 for the Court in that general period of time of two to three

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1 weeks.

2 THE COURT: OK. We can do that.

3 What's your position on speedy trial time between now
4 and that two- to three-week period?

5 MR. AGNIFILO: Without a much more in-depth
6 conversation with my client, I'm not prepared to waive it.

7 THE COURT: OK. What's the government's position on
8 whether or not I should exclude — well, let's get the date,
9 first of all.

10 How about October the 9th? Are counsel available
11 then?

12 MR. AGNIFILO: One second, Judge.

13 THE COURT: Let's say 2 o'clock.

14 MR. AGNIFILO: That's fine, Judge. Thank you.

15 THE COURT: Does that work for the government?

16 MS. SMYSER: Yes, your Honor.

17 THE COURT: OK. Let's set this down for October 9 at
18 2 o'clock.

19 I know the defendant says you don't want to waive
20 speedy trial time. Fine. What is the government's position on
21 whether or not time should be excluded, and what's defense
22 counsel's position on that?

23 MS. SMYSER: Your Honor, the government would move to
24 exclude time under the Speedy Trial Act. The ends of justice
25 outweigh the interests of the public and the defendant in a

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1 speedy trial here given the complexity of the case, given the
2 need for the government to produce discovery to the defendant,
3 and for the defendant and his counsel to begin to review that
4 discovery.

5 THE COURT: All right. So, defense counsel, I
6 understand your position. You don't want to waive speedy trial
7 time. I get that. But would you be prepared to try this case
8 on October the 9th?

9 MR. AGNIFILO: No, no, I'm not saying that I am. What
10 I'm saying is I need more information to come to the Court with
11 an intelligent position on this, and the things that we don't
12 know is what his ability to look at the stuff will be where he
13 is. I don't know where he will be in the MDC. Where they
14 designate him is significant to that. I think the government
15 is — it might help in the process of trying to make sure that
16 he gets what he needs, and I think by October 9 we'll have a
17 better idea of what they can produce and when.

18 So, no, I'm not looking to try the case on October 9.
19 That would be irresponsible. I'm not asking to do that. But
20 what I am asking is — the government's going to move with all,
21 you know, urgency to get me everything, and then October 9, I
22 think we'll have our arms around the situation a little bit
23 better.

24 THE COURT: OK. I will exclude time under the Speedy
25 Trial Act from today's date until October 9 so the defense

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1 counsel gets an opportunity to consult with his client, gets an
2 opportunity to start reviewing the discovery, gets an
3 opportunity to decide how they want to proceed with this case,
4 and also to be better prepared for trial in this case. I find
5 that the interests of Mr. Combs and the interests of justice
6 support exclusion of time under the Speedy Trial Act from
7 today's date until October 9. I further find that the
8 interests of Mr. Combs and the interests of justice outweigh
9 the public's interest in a speedy trial. I will enter an order
10 to that effect.

11 Let me also just share something with counsel. We
12 received a couple of calls in chambers today from people who
13 claimed to have information relevant to the prosecution of this
14 case. We did not engage with those individuals other than my
15 staff instructed them to reach out to the U.S. Attorney's
16 Office. I just wanted to let counsel know that.

17 The other thing is that, in their most recent
18 submission, the government made an allusion to Local Criminal
19 Rule 23.1. Is there anything that anybody wants me to do about
20 that now, counsel for the government? Again, that relates to
21 statements allegedly made by defense counsel on some news
22 channel recently.

23 MS. JOHNSON: We're not asking the Court to do
24 anything right now, your Honor. We just wanted to put a marker
25 down that we thought some of the comments got a little bit

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1 close to the line under the local rule, particularly with
2 respect to issues regarding the victim and potentially
3 inadmissible evidence. So we just wanted to flag that for the
4 Court.

5 THE COURT: OK. Anything else from defense counsel on
6 that?

7 MR. AGNIFILO: I'm not sure that this is something
8 that the Court —

9 THE COURT: They're not asking me to do anything. You
10 don't have to say anything.

11 MR. AGNIFILO: No, no, it's not about that.

12 THE COURT: Go ahead.

13 MR. AGNIFILO: I believe — and I know that courts
14 sometimes do this in terms of sentencing. I've never actually
15 asked a court to do it on a pre-sentencing posture. I think
16 Essex County would be preferable to the MDC, and I know that
17 they do house certain defendants, even in Southern District and
18 the Eastern District cases, in Essex County.

19 I don't know what your Honor can do to help in that
20 regard. I've never made this request of a court at a pretrial
21 setting. But I don't — if your Honor would say you don't have
22 any objection to it, if that was consistent with the protocols
23 that existed, that might even be helpful, and then I'll take
24 the weight on myself to try to make that happen if I can. So
25 any little thing could help me.

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1 THE COURT: OK. Government, what's your view on this?

2 MS. JOHNSON: I don't have the cite off the top of my
3 head, but I know that in the regulations there's — that the
4 designation authority is entirely within — given to the BOP.
5 I think this gets a little complicated, and I think — I don't
6 know that there's anything that the Court can do to put the
7 thumb on the scale of where he's placed. I think that's
8 ultimately a decision of the Bureau of Prisons.

9 THE COURT: My sense is that what defense counsel is
10 asking is it's akin to, at sentencing, even though the Court
11 has no authority to dictate where someone is held, basically
12 akin to the Court making a recommendation that someone be
13 housed at a particular facility. Again, I'm not aware of that
14 being done pretrial, so perhaps what we should do is have
15 counsel file a joint status report regarding this issue,
16 regarding what, if anything, the Court can do in that regard.
17 Certainly, defense counsel, you can look into this on your own.
18 Let's get that by Monday, September 23.

19 Does that work for the defense?

20 MR. AGNIFILO: Yes, your Honor. Thank you.

21 THE COURT: Does that work for the government?

22 MS. JOHNSON: It does, your Honor.

23 THE COURT: That will be a joint submission.

24 Is there anything else today from the government?

25 MS. JOHNSON: No, your Honor. Thank you.

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1 THE COURT: Is there anything else today from the
2 defense?

3 MR. AGNIFILO: No, thank you.

4 THE COURT: Let me just — I will say this: We have a
5 status conference date for October the 9th, and I'll be around,
6 and we can certainly do that. I know that the — being placed
7 in the MDC will be difficult, and often when prisoners are
8 taken to court, they're often woken up at 3:00 or 4:00 in the
9 morning and taken to court. If counsel have discussed matters
10 with themselves and come to some agreement as to how we should
11 move forward, I will not object to counsel submitting a joint
12 report a couple of days ahead of time, because there's no
13 reason to have a court appearance just to simply adjourn it for
14 another day.

15 Anything from the government on that?

16 MS. JOHNSON: Understood, your Honor. We'll speak
17 with counsel and see if we can reach any resolutions prior to
18 October 9.

19 THE COURT: Anything from the defense on that?

20 MR. AGNIFILO: I understand the Court's position.

21 THE COURT: All right. We're adjourned. Thank you.

22 (Adjourned)
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24
25